Supreme Court, U.S.
FILED
FEB 27 2001
CLERK

No. 00-1210

IN THE

Supreme Court of the United States

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

NEIL PAPIANO*
LAURA CITRANO
Iverson, Yoakum, Papiano & Hatch
624 South Grand Avenue
Suite 2700
Los Angeles, California 90017

TEL (213) 624-7444
FAX (213) 629-4563

WILLIAM F. HERTZ, II
ROBERT A. BROCK
Yanz & Hertz
2505 Canada Boulevard
Second Floor
Glendale, California 91208

TEL (818) 500-0410
FAX (818) 247-0136

Counsel for Respondent

*Counsel of Record

February 28, 2001

15 pp

QUESTION PRESENTED

Is the Ninth Circuit's unpublished opinion ordering the district court to follow its previous mandate and law of the case proper?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

JURISDICTION 1

STATEMENT OF THE CASE 2

REASONS WHY THE PETITION SHOULD BE DENIED 3

I. This Court has jurisdiction over the Ninth Circuit's December 2000 judgment, but lacks jurisdiction over the February 2000 decision because a petition was not timely filed 3

II. The opinion which this Court has jurisdiction to review is an unpublished opinion which has no precedential authority 5

III. The MLBPA did not file a timely petition for review of the Ninth Circuit's February 2000 opinion and is therefore foreclosed from raising issues addressed and decided therein, including the Ninth Circuit's holding that there was no support for the arbitrator's determinations 5

IV. The time for filing a petition from the February 2000 decision is not expanded by the December 2000 decision because the former was not disturbed or revised by the latter 7

V. The Ninth Circuit's decision does not warrant certiorari because it is of little or no import beyond the present parties involved and is not in conflict with this Court's decisions 9

CONCLUSION 10

TABLE OF AUTHORITIES

CASES

Page

Federal Trade Commission v. Minneapolis-Honeywell Co. 344 U.S. 206 (1952) 7, 8

Department of Banking v. Pink, 317 U.S. 264 (1942) .. 4

Garvey v. Major League Baseball Players Association, 203 F.3d 580 (9th Cir. 2000) 4, 6, 9, 10

Garvey v. Major League Baseball Players Association, No. 00-56080, 2000 U.S. App. LEXIS 31918 (9th Cir. Dec. 7, 2000) 4, 5, 8, 10

Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960) 6

United Paperworkers Intl. Union, AFL-CIO v. Misco, Inc. 484 U.S. 29, 38 (1987). 6, 9

United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 6

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 6

STATUTE

28 U.S.C. §1254(1) 1

COURT RULES

SUP. CT. R. 13.1 4

SUP. CT. R. 13.3 4

9TH CIR. R. 36-3(a) 5

IN THE

Supreme Court of the United States

No. 00-1210

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Petitioner,

v.

STEVE GARVEY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Steve Garvey, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion of the United States Court of Appeals for the Ninth Circuit in this case. That opinion is unreported.

JURISDICTION

The Major League Baseball Players Association ("MLBPA") purports to appeal two opinions of the Ninth Circuit Court of Appeals: (1) entered on February 10, 2000, over which this Court lacks jurisdiction for review because such a petition is untimely; and (2) entered December 7, 2000, over which this Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

The MLBPA's "Statement of the Case" is misleading in its inclusion of only favorable facts to its position, and also reaches conclusions unsupportable from an independent review of all the facts.

In its Statement of the Case, the MLBPA goes to great lengths to show how it was eminently reasonable and fair in its process of evaluating the players' claims and obtaining determinations from the arbitrator. This self-serving characterization could not be more inaccurate or misleading.

For example, the Settlement Agreement, discussed in the MLBPA's petition at page 3, contemplated that the final distribution plan would be issued no later than December 31, 1992. Now, more than eight years later, the final distribution plan has not yet been submitted.

Further, on pages 4 through 8 of its petition, the MLBPA purports to characterize and discredit Garvey's claims as ever-changing. This discussion does not disclose, however, that the MLBPA's standard criteria for these lost extension claims had not even been approved when the claims questionnaires were first due, nor does it disclose the fact that the standards changed as the process went along.

To clarify, the claims questionnaires were required to be filed by May 1991, yet the Framework was not approved until September 1991. The test, that a contract extension had to have been actually offered, was not even articulated until the arbitrator's award for the 1986-87 lost extension claims came out on February 14, 1994, following the revised recommendation of the MLBPA. Until then, the standard for lost extension claims, as articulated in the Framework, had been that the extension would have been signed after November 1, 1985, and would have begun with the 1987 season or future seasons.

At all times, Garvey attempted to provide information responsive to the focus of the MLBPA's inquiry, but the MLBPA kept changing the standard. As the MLBPA changed the standard, Garvey presented evidence of facts responsive to the new standard. That is why the evidence of the Padre's extension offer was not furnished until the hearing in 1996, which was the definitive position of his claim.

In addition, the MLBPA suggests that a "*de novo* arbitration hearing" was the one and only form of relief sought by Garvey in the district court. In fact, Garvey requested various forms of relief—including an order simply vacating the arbitration award—and "for such other and further relief as the Court deems just and proper."

The Ninth Circuit's February 10, 2000, decision and its background and analysis is a clear and concise statement of the case. It is hereby adopted by Garvey as his Statement of the Case.

REASONS WHY THE PETITION SHOULD BE DENIED

I. This Court has jurisdiction over the Ninth Circuit's December 2000 judgment, but lacks jurisdiction over the February 2000 decision because a petition was not timely filed.

The MLBPA's only assertion in its statement of jurisdiction is that "[t]he opinion and final judgment of the court of appeals were entered on December 5, 2000." This statement is misleading and inaccurate.

The Ninth Circuit issued two separate and distinct judgments as the result of two separate and distinct appeals from two separate and distinct orders of the district court as follows:

(1) February 10, 2000, published opinion after appeal by Steve Garvey from "the district court's denial of his Amended Motion to Vacate Arbitration Award."[1]

(2) December 7, 2000, unpublished opinion after appeal by Steve Garvey "from the district court's order remanding his cases to the Arbitration Panel for de novo arbitration hearings."[2]

Supreme Court Rule 13.1 provides that a petition for a writ of certiorari must be brought within 90 days of the judgment. This 90-day time limit runs from the date of entry of the judgment or order sought to be reviewed from the court below.[3] This Court has uniformly treated the statutory time limitations as mandatory and jurisdictional and the untimely petition in a civil case accordingly "must ... be denied for want of jurisdiction."[4]

Because the MLBPA filed its petition for writ of certiorari on January 26, 2001—almost one year after the Ninth Circuit's February 2000 published opinion—this Court lacks jurisdiction to review the February 2000 decision.

---

[1]*Garvey v. Major League Baseball Players Association*, 203 F.3d 580, 589 (9th Cir. 2000).

[2]*Garvey v. Major League Baseball Players Association*, No. 00-56080, 2000 U.S. App. LEXIS 31918, at *2 (9th Cir. Dec. 7, 2000).

[3]SUP. CT. R. 13.3.

[4]*Department of Banking v. Pink*, 317 U.S. 264, 268 (1942).

II. The opinion which this Court has jurisdiction to review is an unpublished opinion which has no precedential authority.

The December 7, 2000, opinion of the Ninth Circuit over which this Court has jurisdiction is an unpublished opinion.[5] As a result, the opinion is not binding and has no precedential value.[6]

Because the Ninth Circuit prohibits citation or use of its unpublished memorandum dispositions, such as the one of which the MLBPA is now requesting review, unpublished decisions of this circuit have no precedential authority and are therefore not worthy of certiorari.

III. The MLBPA did not file a timely petition for review of the Ninth Circuit's February 2000 opinion and is therefore foreclosed from raising issues addressed and decided therein, including the Ninth Circuit's holding that there was no support for the arbitrator's determinations.

The MLBPA commingles the issues addressed and decided in the published February 2000 opinion of the Ninth Circuit with the issues addressed and decided in the unpublished December 2000 opinion, in an attempt to obtain review of both by way of one petition. However, because a petition for review of the published February 2000 decision

---

[5] *Garvey v. Major League Baseball Players Association,* No. 00-56080, 2000 U.S. App. LEXIS 31918, at *1 (9th Cir. Dec. 7, 2000).

[6] Ninth Circuit Rule 36-3(a) specifically states:

> "Not Precedent: Unpublished dispositions and orders of this Court are not binding precedent, except when relevant under the doctrine of law of the case, res judicata, or collateral estoppel."

was not timely filed, the MLBPA is foreclosed from raising the issues addressed and decided therein.

Both opinions are clear on their face and specifically set out the following, separately decided issues:

(1) February 2000 decision: The Ninth Circuit articulated the general rule of deference to arbitral decisions, citing this Court's opinions in *United Paperworkers Intl. Union, AFL-CIO v. Misco, Inc.*,[7] and what has become known as the *Steelworkers Trilogy*,[8] then focused on the exception to the general rule articulated by this Court in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*[9] The court then determined that the exception applied in this case, held that there was no support whatever for the arbitrator's determinations, and overturned the arbitrator's denial of Garvey's award.[10]

(2) December 2000 decision: The Ninth Circuit vacated the district court's order that remanded the case for *de novo* arbitration proceedings and ordered the district court to instruct the arbitration panel to enter an award for Garvey in the amounts claimed by him.

---

[7]484 U.S. 29, 38 (1987).

[8]*See Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[9]363 U.S. 593 (1960).

[10]*Garvey v. Major League Baseball Players Association*, 203 F.3d 580 (9th Cir. 2000).

The MLBPA may not raise, and this Court does not have jurisdiction to review, issues decided in the February 2000 decision, including the Ninth Circuit's rejection of the arbitrator's fact finding and the court's determination that there was no support for the arbitrator's determinations—issues which constitute the entirety of the MLBPA's "Question Presented" and comprise the majority of the argument contained in the MLBPA's "Reasons for Granting the Petition."

If the MLBPA actually had objections to the February 2000 decision, it should have petitioned for a writ of certiorari within 90 days of the February 2000 judgment. Because it failed to do so, the MLBPA is now foreclosed from raising those issues here.

IV. The time for filing a petition from the February 2000 decision is not expanded by the December 2000 decision because the former was not disturbed or revised by the latter.

In *Federal Trade Commission v. Minneapolis-Honeywell Co.*,[11] this Court articulated the test used to determine when the period within which a petition for certiorari must be filed begins to run anew, where it held:

> "The test is a practical one. The question is whether the lower court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality."[12]

---

[11] 344 U.S. 206 (1952).

[12] *Id.* at 212.

In applying the test to the circumstances of the case before it, the Court stated:

> "[W]e cannot hold that the time for filing a petition for certiorari was enlarged simply because this paper may have prompted the court below to take some further action which had no effect on the merits of the decision that we are now asked to review in the petition for certiorari."[13]

In this case, the Ninth Circuit was not asked to—nor did it—amend its previous judgment, and its December 2000 judgment did not have any effect on the merits of its February 2000 decision. In fact, in its December 2000 decision, the Ninth Circuit reiterated and summarized its own findings and conclusions which were set out in its February 2000 opinion, then stated that the only possible result from its decision was "the result our holding contemplated—an award in Garvey's favor," and concluded that "the district court did not properly apply our mandate or the law of the case when it remanded the cases to the Arbitration Panel for de novo arbitration proceedings."[14]

Because the Ninth Circuit upheld—and did not revise or disturb—its previous judgment, the December 2000 decision does not enlarge the time for filing a petition for certiorari from the February 2000 judgment. Therefore, any objection to the issues addressed and decided in the February 2000 judgment are not timely and may not be considered by this Court.

---

[13] *Id.* at 210-211.

[14] *Garvey v. Major League Baseball Players Association,* No. 00-56080, 2000 U.S. App. LEXIS 31918, at *3-5 (9th Cir. Dec. 7, 2000).

V. The Ninth Circuit's decision does not warrant certiorari because it is of little or no import beyond the present parties involved and is not in conflict with this Court's decisions.

The circumstances which generated the decision from which appeal is taken—specifically, an arbitrator's disregard of the full record before him and administration of his own brand of industrial justice—are so novel that the decision is of little or no import beyond the present parties involved. The Ninth Circuit noted the rarity of the events in this case where it held:

> "We consider the circumstances unique. We doubt that our decision will have any precedential value in cases involving more traditional methods of resolving disputes in the workplace. Certainly, we are aware of few, if any, cases in which arbitrators have dispensed their own brand of industrial justice in the ordinary arbitral process, or indeed in any proceeding."[15]

Further, in its unpublished opinion, the Ninth Circuit specifically stated that its decision is not contrary to this Court's holding in *United Paperworkers Int'l Union v. Misco, Inc.*[16] The court went on to distinguish the facts of *Misco* with the facts of this case, noting that *Misco* was remanded for new arbitration proceedings because the arbitrator had refused to consider certain evidence in reaching his decision, where in this case the arbitrator's decision was

---

[15]*Garvey v. Major League Baseball Players Association*, 203 F.3d 580, 592 (9th Cir. 2000).

[16]484 U.S. 29 (1987).

based on a full and fair record.[17] In this case, the arbitrator did not fail to consider evidence, he "simply disregarded the record."[18]

Because the Ninth Circuit's decision to have the arbitration panel enter an award for Garvey does not present questions whose resolution will have any importance beyond the particular facts and parties involved in this case, and because the decision is in accord with decisions of this Court, review is unwarranted.

CONCLUSION

The decision sought to be reviewed over which this Court has jurisdiction is unpublished and therefore has no precedential authority. Further, the decision is of little or no importance beyond the present parties involved and is not in conflict with this Court's decisions. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

NEIL PAPIANO*
LAURA CITRANO
Iverson, Yoakum, Papiano & Hatch
624 South Grand Avenue
Suite 2700
Los Angeles, California 90017

TEL (213) 624-7444
FAX (213) 629-4563

WILLIAM F. HERTZ, II
ROBERT A. BROCK
Yanz & Hertz
2505 Canada Boulevard
Second Floor
Glendale, California 91208

TEL (818) 500-0410
FAX (818) 247-0136

Counsel for Respondent

*Counsel of Record

February 28, 2001

---

[17] *Garvey v. Major League Baseball Players Association,* No. 00-56080, 2000 U.S. App. LEXIS 31918, at *3, n.5 (9th Cir. Dec. 7, 2000).

[18] *Garvey v. Major League Baseball Players Association*, 203 F.3d 580, 591 (9th Cir. 2000).